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Supreme Court, U.S.
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No. 95-767

In The

Supreme Court of the United States

October Term, 1995

♦

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA, ET AL.,
Petitioner,

v.

J. JACK BRAS,
individually, and doing business as
J. JACK BRAS & ASSOCIATES,
Respondent.

♦

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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RESPONDENT'S OBJECTION TO MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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7 pp

OBJECTION TO MOTION BY AT&T, PACIFIC GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Respondent J. Jack Bras files the following objection to motion by AT&T, Pacific Gas, & Electric Company and Southern California Edison Company for permission to file an Amici Curiae brief in support of the Petition for Writ of Certiorari filed by the Public Utilities Commission of the State of California (hereinafter, the Commission).

The grounds for such objection are that the content of the arguments and facts presented in the Amici Curiae brief submitted to this Court in support of the Petition for Certiorari are not supported by the record and the brief materially misstates the "perception" of the various utilities as to the challenged General Order 156, in that it contradicts statements made by the very same utilities in their "comments" to the Commission in the Commission's own administrative proceeding regarding General Order 156 (Order Instituting Rulemaking, R. 93-09-026, appended to Respondent's brief, as A-23).

In particular, the basis of the Amici Curiae brief appears to be that there is no nexus for Article III standing of Respondent J. Jack Bras to challenge the WMBE statute and Commission General Order 156 because the Amici utilities now allege they perceived that the WMBE statute and General Order 156 are voluntary, rather than mandatory. However, in the Commission's own recent administrative proceeding "Order Instituting Rulemaking, R 9309-026, utilities including, but not

limited to AT&T, Pacific Gas & Electric and Pacific Bell filed comments stating that the perception of the utilities was that the program was NOT voluntary but was in fact MANDATORY:

The belief of the utilities, and we believe the Program Staff, was that the Commission program was mandatory. While the goals were not quotas, the utilities were required to set minimum procurement goals of 15% for minority-owned businesses and 5% for women-owned business (sic)(Section 8.2) and that there were potential repercussions to the utilities for failure to meet the goals established by the Commission. Joint Utilities Comments pps. 3, 4, attached hereto as Exhibit A and incorporated herein by reference.

. . .

fn 2 *See the extensive complaint procedures set forth in Section 7, the annual reports utilities are required to file with the Commission (Section 9) and the annual report the Commission is required to file with the legislature (Public Utility Code Section 8283). Also note D. 89-08-026 which clarifies that sanctions can be recommended in generic annual proceedings as well as in rate cases.* Joint Utilities Comments pps. 3, 4, fn 2. (Exhibit A)

. . .

...Section 6 of General Order 156 is entitled "Utility Implementation". The Preamble to Section 6 of General Order states "each utility's WMDVBE program shall be awarded to WMDVBEs." Such language can be interpreted as compelling utilities to award contracts to WMDVBE at a certain level. Joint Utilities Comments p. 4 (emphasis in original). (Exhibit A)

. . .

Attached for the Court's reference, are the "comments" by the Joint Utilities, including but not limited to AT&T, Pacific Gas & Electric Company and the "comments" of Southern California Edison Company to the proposed decision of ALJ Judge Ramsey in the Commission's own administrative proceeding OIR R. 93-09-026 as Exhibit A - Comments of Joint Utilities on Proposed Decision; Exhibit B - Comments of Southern California Edison Company (U338-E) on Proposed Decision; Exhibit C - AT&T Communication of California, Inc.'s (U5002c) Response to the California Public

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CERTIFICATE OF SERVICE

In accordance with U.S. Supreme Court Rules 21 and 29, and 33.2, I hereby certify that I am a member of the Bar of this court, that I am Counsel of Record for petitioner, the Public Utilities Commission of the State of California ("Commission"), herein, and on December 27, 1995, I served the accompanying RESPONDENT'S OBJECTION TO MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI which was received by our office via facsimile on December 19, 1995, by

causing three copies to be sent via first class mail delivery to counsel for Petitioner and Amici Curiae in this proceeding at the addresses listed below:

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Executed at Walnut Creek, California, this 27th day of December 1995.

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Utilities Commission's Order Instituting Rulemaking; Exhibit D - Comments of Southern California Edison Company (U338-E) in Response to Commission's Rulemaking and Exhibit E - the Proposed Decision of ALJ Ramsey in that proceeding; are attached hereto and incorporated herein by reference. As can be seen from a review of the utilities "comments" filed in the Commission's administrative proceedings, many of the statements by the utilities differ from the statements and arguments now made about the perception of the utilities as argued in the Amici Curiae brief, and therefore the motion to file an Amici Curiae brief should be summarily denied.

In addition, much of the factual content of the Amici Curiae brief does not contain references to the record on appeal but only recites verbatim portions of the District Court's unpublished statement of decision. There is no reason to allow an Amici brief which merely repeats matters argued by the parties and relies exclusively on the unpublished opinion of the District Court which was reversed by the Ninth Circuit Court of Appeals.

Accordingly, Respondent J. Jack Bras respectfully requests that this Court deny the motion by AT&T, Pacific Gas & Electric

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Company and Southern California Edison for permission to file the Amici Curiae brief, as submitted via mail December 14, 1995, and received via facsimile December 19, 1995 and via mail December 22, 1995.

Respectfully Submitted:

Dated: December 27, 1995

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